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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 DAVID TURNIPSEED,

12 Defendant.

NO. CR-05-116-RHW-7

**PRELIMINARY ORDER OF
FORFEITURE**

13 Before the Court is the Government's Motion for Preliminary Order of
14 Forfeiture (Ct. Rec. 286). This motion was heard without oral argument. The
15 Government requests a preliminary order of forfeiture pursuant to Rule 32.2 of the
16 Federal Rules of Criminal Procedure and based upon the guilty plea of David
17 Turnipseed to the offense of Trafficking in Contraband Cigarettes, as charged in
18 Count 14 of the Indictment, in violation of 18 U.S.C. §§ 2342(a) and 2, and upon
19 the terms of the Plea Agreement filed in this matter between Mr. Turnipseed and
20 the United States.

21 Accordingly, **IT IS HEREBY ORDERED:**

22 1. The Government's Motion for Preliminary Order of Forfeiture (Ct. Rec.
23 286) is **GRANTED**.

24 2. Pursuant to 18 U.S.C. § 2344(c) and 28 U.S.C. § 2461(c), Defendant
25 David Turnipseed's interest in the following property is forfeited to the United
26 States of America:

27 a. Thirteen thousand six (13,006) cartons of contraband cigarettes
28 seized by U.S. Immigration and Customs Enforcement Agents on June

1 8, 2004, from BJ'S II SMOKE SHOP at 4315 Pacific Highway East in
2 Tacoma, Washington, a smoke shop owned by DAVID
3 TURNIPSEED;

4 b. Seven thousand six hundred twenty-nine (7,629) loose packs of
5 contraband cigarettes seized by U.S. Immigration and Customs
6 Enforcement Agents on June 8, 2004, from BJ'S II SMOKE SHOP at
7 4315 Pacific Highway East in Tacoma, Washington, a smoke shop
8 owned by DAVID TURNIPSEED;

9 c. Four thousand seven hundred eighty-three (4,783) cartons of
10 contraband cigarettes seized by U.S. Immigration and Customs
11 Enforcement Agents on June 8, 2004, from BJ'S II SMOKE SHOP at
12 1305 Alexander Avenue East in Tacoma, Washington, a smoke shop
13 owned by DAVID TURNIPSEED;

14 d. One thousand eight hundred seventy-one (1,871) loose packs of
15 contraband cigarettes seized by U.S. Immigration and Customs
16 Enforcement Agents on June 8, 2004, from BJ'S II SMOKE SHOP at
17 1305 Alexander Avenue East in Tacoma, Washington, a smoke shop
18 owned by DAVID TURNIPSEED; and

19 3. Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), Defendant
20 David Turnipseed's interest in the following property is forfeited to the United
21 States of America:

22 a. One hundred sixty-five thousand three-hundred sixty-three dollars
23 (\$165,363.00) in United States currency seized by U.S. Immigration
24 and Customs Enforcement Agents on June 8, 2004, from BJ'S II
25 SMOKE SHOP at 4315 Pacific Highway East in Tacoma,
26 Washington, a smoke shop owned by DAVID TURNIPSEED; and

27 b. Fourteen thousand thirteen dollars (\$14,013.00) in United States
28 currency seized by U.S. Immigration and Customs Enforcement

1 Agents on June 8, 2004, from BJ'S II SMOKE SHOP at 1305
2 Alexander Avenue East in Tacoma, Washington, a smoke shop owned
3 by DAVID TURNIPSEED.

4 **IT IS FURTHER ORDERED** that the United States Department of
5 Homeland Security, Customs and Border Protection, and/or its agents and
6 representatives, shall seize the above-described property and maintain said
7 property in its custody and control until further order of this Court, or until this
8 Order becomes final pursuant to Rule 32.2(c)(2) of the Federal Rules of Criminal
9 Procedure.

10 **IT IS FURTHER ORDERED** that pursuant to 21 U.S.C. § 853(n), the
11 United States shall publish notice of the Preliminary Order of Forfeiture and the
12 intent of the United States to dispose of the above-described property, in
13 accordance with law. The notice shall run for one (1) day each week for three (3)
14 consecutive weeks in the Daily Journal of Commerce and/or any other appropriate
15 newspaper of general circulation. The notice shall state that any person, other than
16 Defendant, having or claiming a legal interest in property described above must
17 file a petition with the Court within thirty (30) days of the final publication of
18 notice or of receipt of actual notice, whichever is earlier.

19 The notice shall advise such interested person that:

- 20 1. the petition shall be for a hearing to adjudicate the validity of the
21 petitioner's alleged interest in such properties;
22 2. the petition shall be signed by the petitioner under penalty of perjury; and
23 3. the petition shall set forth the nature and extent of the petitioner's right,
24 title or interest in the forfeited properties.

25 The petition shall also set forth any additional facts supporting the
26 petitioner's claim and the relief sought.

27 The United States shall also, to the extent possible, provide direct written
28 notice as a substitute for the published notice to any person known to have alleged

1 an interest in the above-described property, which is the subject of this Preliminary
2 Order of Forfeiture. Upon adjudication of any third-party claims, this Court will
3 enter a Final Order of Forfeiture pursuant to Rule 32.2(c)(2) of the Federal Rules
4 of Criminal Procedure, in which all such claims are addressed.

5 **IT IS FURTHER ORDERED** that pursuant to Rule 32.2(b)(3) of the
6 Federal Rules of Criminal Procedure, this Preliminary of Forfeiture shall become
7 final as to Defendant prior to the time of sentencing, upon conclusion of the
8 ancillary proceeding, and shall be made part of the sentence and included in the
9 judgment. Based upon the Plea Agreement and the guilty plea of Defendant
10 herein, the Court finds that Defendant had an interest in the forfeited properties. If
11 no third party files a timely claim, this Order shall become the Final Order of
12 Forfeiture as provided by Rule 32.2(c)(2) of the Federal Rules of Criminal
13 Procedure.

14 **IT IS FURTHER ORDERED** that after the disposition of any motion filed
15 under Rule 32.2(c)(1)(A) of the Federal Rules of Criminal Procedure, and before a
16 hearing on any third party petition, discovery may be conducted in accordance with
17 the Federal Rule of Civil Procedure upon a showing that such discovery is
18 necessary or desirable to resolve factual issues.

19 **IT IS FURTHER ORDERED** that the United States shall have clear title to
20 the properties listed above following the Court's disposition of all third party
21 interests, or, if none, following the expiration of the period provided in 21 U.S.C. §
22 853(n) for the filing of third party petitions.

23 **IT IS FURTHER ORDERED** that the Court shall retain jurisdiction to
24 enforce this Order, and to amend it as necessary, pursuant to Rule 32.2(e) of the
25 Federal Rules of Criminal Procedure.

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28 **IT IS SO ORDERED.** The District Court Executive is directed to enter this

1 Order, forward copies to counsel, and to forward seven (7) "raised seal" certified
2 copies to the United States Attorney's Office in Seattle, Washington.

3 **DATED** this 8th day of June, 2007.

4 *S/ Robert H. Whaley*

5 ROBERT H. WHALEY
6 United States District Judge

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